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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	97-CV-6294T
-vs-)	
)	
ROCHESTER GAS & ELECTRIC)	
CORPORATION,)	
)	
Defendant.)	
)	

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, plaintiff United States of America moves for summary judgment and hereby opposes defendant Rochester Gas & Electric's ("RG&E") motion for summary judgment. Plaintiff respectfully submits that upon Plaintiff's Rule 56 Statement of Material Facts as to Which There is No Genuine Issue to be Tried, dated October 31, 1997; the Affidavit of Richard W. Greene, sworn to September 2, 1997; and Plaintiff's Memorandum of Law Supporting its Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment, Plaintiff is entitled to summary judgment.

Plaintiff submits evidence that the agreement between RG&E and the University of Rochester is a restraint on trade in violation of Section 1 of the Sherman Act, 15 U.S.C. §1. The evidence supporting a finding of antitrust liability is contained in Plaintiff's Rule 56 Statement, and in the uncontested portion of the Affidavit of Richard W. Greene, submitted by defendants. Further, defendant's conduct is not immune under the state action doctrine because defendant

has failed to establish a clearly articulated policy of the State of New York to prevent competition from cogenerators in the market for electric generation. Plaintiff respectfully submits that the facts establishing antitrust liability are clear, and the illegal conduct is not protected by any law or legal doctrine. Thus, this case is ripe for summary judgment.

In addition, Plaintiff hereby urges the court to deny RG&E's motion for summary judgment. With this motion and pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff today files a Statement contravening statements contained in Defendant's Rule 56 Statement of Material Facts as to Which There is No Genuine Issue to Be Tried. Plaintiff submits that defendant is not entitled to summary judgment at this time as this statement sets forth specific facts showing that there are genuine factual issues necessitating a trial.

Dated: October 31, 1997

DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

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